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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,421	10/31/2003	Eddie Lane Smitherman	047040-00001	2070
26359	7590	11/03/2005	EXAMINER	
SIROTE & PERMUTT, P.C. P.O. BOX 55727 2311 HIGHLAND AVENUE SOUTH BIRMINGHAM, AL 35255-5727			BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,421

Applicant(s)

SMITHERMAN, EDDIE LANE

Examiner

Carolyn T. Blake

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-50 and 52-75 is/are pending in the application.
- 4a) Of the above claim(s) 3-27, 29, 38-47, 49, 50 and 52-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,28,30-37,48 and 55-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on August 18, 2005.
2. The objection to the drawings is withdrawn in view of the amendment.
3. The objection to the specification is withdrawn in view of the amendment.
4. The objection to claims 2 and 48 is withdrawn in view of the amendment.
5. The text of those sections in Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

6. Claims 1, 28, 30, 48, 55, 56, and 64-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (6,662,836).

Regarding claim 1, Anderson (6,662,836) discloses a tree trimmer comprising: a means of transportation; a swing frame (unnumbered, see FIG 1) swingably connected about a substantially vertically axis on the means of transportation (10); a backhoe boom (14) pivotally connected about a substantially horizontal axis on the swing frame; a telescoping boom (18) connected with the backhoe boom (14); means for detachably connecting the telescoping boom (18) with the backhoe boom (14); and cutting means (24) mounted about a first end of the telescoping boom (18).

Regarding claim 28, Anderson discloses a tree trimming apparatus comprising: a telescoping boom assembly (18) detachably connected with a backhoe boom (14); and cutting means (24) mounted about a first end of the telescoping boom assembly (18).

Regarding claims 30, 56, and 68, Anderson discloses the telescoping boom assembly (18) includes a telescoping boom (22), a telescoping boom receiving portion (20), and a backhoe boom receiving portion (by 16).

Regarding claim 48, Anderson discloses a tree trimming apparatus comprising: an arm (14) connected with a means of transportation selected from a group consisting of a backhoe and a backhoe loader; a telescoping boom assembly (18) connected with the arm (14); and a cutting means (24) connected with the telescoping boom assembly (18).

Regarding claims 55, 65, and 67, Anderson discloses a bucket and dipperstick of the backhoe boom have been removed from the backhoe boom.

Regarding claims 64 and 66, Anderson discloses the means of transportation (10) is selected from a group consisting of a backhoe and a backhoe loader.

Claim Rejections - 35 USC § 103

7. Claims 31, 57, and 69 rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson as applied to claims 1, 28, and 48 above, and further in view of Milbourn (5,201,350).

Anderson fails to expressly disclose the assembly is adapted to be powered by a power source and controlled by a set of control that are integral with an existing means of transportation. However, Milbourn discloses a tree trimming attachment for use with a backhoe wherein the power source and controls of the existing means of transportation are used. This feature makes the device practical and inexpensive to implement. Therefore, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to use the existing power source and controls, as taught by Milbourn, of the Anderson backhoe for the purpose of practically and inexpensively implementing the telescoping boom with the backhoe.

8. Claims 32-37, 58-63, and 70-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson as applied to claims 1, 28, and 48 above, and further in view of Hickman (4,269,241).

Anderson fails to disclose first and second mounting brackets, first and second reels, and first and second rollers as claimed. However, Hickman discloses a tree trimming apparatus comprising: a telescoping boom assembly (20); cutting means (30); a first mounting bracket and a second mounting bracket (unnumbered, supporting reels 113) adjacent the boom; a first reel (113a) and a second reel (113b), wherein the first reel is positioned adjacent to a side of the boom assembly and the second reel is positioned adjacent to another side of the boom assembly; a first roller (111) and a second roller (112), wherein the first roller and the second roller are located above a substantially horizontal plane bisecting the brackets; at least one reel and at least one roller are positioned adjacent the boom assembly; and a conduit (110) extends between the reel and roller. This system of brackets, rollers, reels, and conduits works together to extend and contract the telescoping boom using hydraulic pressure. Specifically, the roller and reels prevent tangling of the hydraulic line while allowing for increased movement of the boom. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide rollers and reels, as disclosed

by Hickman, with the Mullet device for the purpose of preventing conduit tangling while increasing boom movement.

Response to Arguments

9. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB
October 26, 2005



Allan N. Shoap
Supervisory Patent Examiner
Group 3700